Filed 12/12/08 Pacific Ranch Homeowners Assn. v. Murry CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PACIFIC RANCH HOMEOWNERS ASSOCIATION,

Plaintiff and Respondent,

v.

ELMER MURRY, JR.,

Defendant and Appellant.

G040215

(Super. Ct. No. 06CC05430)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Derek W. Hunt, Judge. Affirmed.

Brewer & Brewer and Templeton Briggs for Defendant and Appellant.

Blackmar, Principe & Schmelter, Gerry C. Schmelter and Chantelle M. Fisher; Law Offices of Richard A. Tinnelly and Bruce R. Kermott for Plaintiff and Respondent.

Elmer Murry, Jr., appeals from a postjudgment order that fixed the amount of attorney fees and costs awarded to Pacific Ranch Homeowners Association (Association), after the latter prevailed in this action to compel Murry to remove a hot tub from his condominium unit. Murry argues the award was unreasonable. We disagree and affirm.

FACTS

The details of the underlying dispute between the parties are set out in our opinion in a companion case, filed simultaneously with this opinion, in which we affirm the judgment for the Association. (*Pacific Ranch Homeowners Association v. Murry* (Dec. 12, 2009, G039899) [nonpub. opn.].) The only issue here is the size of the fee award. In a postjudgment motion, the Association requested fees and costs of $92,708.95. After hearing argument, the trial court awarded $47,367, without explanation.

DISCUSSION

Murry argues the Association's lawyers spent too much time on the case and charged too high a rate. He offers his own view of a reasonable time and billing rate for pre-complaint investigation, preparing the complaint, drafting and responding to discovery. For trial preparation and trial, he suggests nothing should be awarded because the sums for work to that point already were too high. None of these contentions is supported by evidence of the alleged reasonable time or fee for such work by comparable lawyers in the legal community. We find no merit in the argument.

"We must affirm an award of attorney fees absent a showing that the trial court clearly abused its discretion. [Citation.] An abuse of discretion is shown when the award shocks the conscience or is not supported by the evidence. [Citation.]" (*Jones v. Union Bank of California* (2005) 127 Cal.App.4th 542, 549-550.)

No abuse of discretion is shown in the fee award to the Association. Murry simply claims it was unreasonable, but his unsupported assertion does not make it so. In

opposing the motion, Murry never submitted a declaration from his attorney, or any other attorney, to show the usual time for the work performed, or the customary rate for attorneys with experience similar to those retained by the Association. So we are left with an opposing attorney's belief his prevailing opponent could have won with less effort. The lament is understandable, but it hardly amounts to a showing the award was unsupported by the evidence.

Murry also contends the award is excessive because there was duplicative effort, including using two attorneys at a trial that was relatively simple and lasted less than eight hours. He does not state how they should have known his case was "simple," describe the duplicative work involved, or identify the dollar amount he disputes. We deem the point waived for failure to support it with reasoned argument or record citations. Beyond that, we note the trial court awarded the Association $47,367 of the $92,708.95 fee requested, a reduction of approximately 49 percent, impliedly agreeing to a large extent that the amount sought was high. No showing has been made that the reduced fee was an abuse of discretion.

Finally, Murry complains the trial court did not explain its decision and argues the error was significant because the court said it had not read the Association's billing records submitted in support of the motion. He is mistaken.

A statement of decision is not required on a fee motion, and more broadly, none is required on a motion generally. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1294.) And the assertion the trial court did not read the billing records is a misrepresentation of the record. At oral argument, the court said "I haven't studied the backup materials [the Association] has furnished . . . What I need is some quiet time in my chambers to inspect this backup material . . . to reflect . . . so I'm just going to take [the motion] under submission." This kind of argument, using an out-of-context quote to create a false impression, is unacceptable conduct by an attorney. It is the type of conduct that can lead to sanctions.

Since no abuse of discretion is shown in the fee award, the judgment appealed from is affirmed. Association is entitled to costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

MOORE, J.

IKOLA, J.